

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**BRIAN SMITH AND ASHLEY SMITH, Individually
and as Parents of CLAYTON SMITH, a Minor**

PLAINTIFFS

VS.

NO. 4:06CV00918

**CARDINAL HEALTH 303, INC.
(Formerly known as Alaris Medical Systems, Inc.)**

DEFENDANT

ORDER

Pending is Plaintiffs' motion in limine to allow the introduction of the value of medical services provided to Minor Plaintiff, Clayton Smith. (Docket # 49). Defendant has responded.

Plaintiff argues that the Civil Justice Reform Act of 2003 is unconstitutional in that it violates Article V, section 32 of the Arkansas Constitution and Amendment 80 to the Arkansas Constitution because the statute infringes on the Plaintiff's right to complete compensation for personal injury and infringes on the powers of the Arkansas Supreme Court to set rules of civil procedure. Specifically, Plaintiff claims that Ark. Code Ann. §16-55-212 changed the collateral-source rule.

The Court has located one case in which the Arkansas Supreme Court has been presented with this argument, however, the Court found the issue moot and declined to issue an advisory opinion. *Shipp v. Franklin*, 370 Ark. 262, ____ S.W.3d ____ (2007). In *Shipp*, the Court set forth the standard for reviewing the constitutionality of a statute:

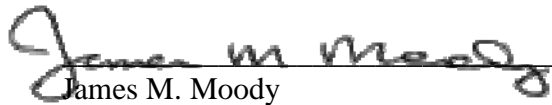
It is well-settled that there is a presumption of validity attending every consideration of a statute's constitutionality; every act carries a strong presumption of constitutionality, and before an act will be held unconstitutional, the incompatibility between it and the constitution must be clear. *Summerville v. Thrower*, ___ Ark. ___, ___ S.W.3d ___ (Mar. 15, 2007). Any doubt as to the constitutionality of a statute must be resolved in favor of its constitutionality. *Id.* The heavy burden of demonstrating the unconstitutionality is upon the one attacking

it. *Id.* If possible, we will construe a statute so that it is constitutional. *Summerville v. Thrower, supra.*

Shipp v. Franklin, 370 Ark. 262, ___ S.W.3d ___ (2007).

In light of this heavy burden and the strong presumption of statute's constitutionality the Court declines to find the statute unconstitutional.

IT IS SO ORDERED this 19th day of November, 2007.


James M. Moody
United States District Judge